IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE ELEVENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 7969 of 2005

Between:

T. Balagangadhar Tilak, S/o. Jara San Dhudu,
R/o. 15-24-20, Kotta Road, Buchirajupalem, Visakhapatnam.

... PETITIONER

AND

The Visakhapatnam Municipal Corporation, Rep. byits Commissioner,
Visakhapatnam.

...RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue order or orders or direction or writ more particularly one in the nature of Writ of Mandamus declaring the action of the respondent in laying road in the Petitioner site 825 sq.yds. Situated in S.No. 14/2, Patta No. 936/A, chinna Waltair, Visakhapatnam, and dispossessing the petitioner from his land without following dur procedure of law as illegal, arbitrary and consequentially direct the respondent to act in accordance with law if they require petitioner land for laying road.

Counsel for the Petitioner: MR.M.L.ALI

Counsel for the Respondent: MR.N.RANGA REDDY (SC FOR MNICIPAL CROP. VSP.)

The Court at the stage of admission made the following:

ORDER:

Heard the learned counsel for the petitioner and the learned standing counsel appearing for the respondent.

The petitioner seeks a Writ of Mandamus declaring the action of the respondent in laying road in the petitioner's site situated in Sy.No.14/2 of China Waltair, Visakhapatnam, without following due process of law, as arbitrary and illegal.

It is represented by the learned counsel appearing for both parties that the issue involved in this writ petition is squarely covered by a decision of this Court in W.P. No. 21198 of 1997 and batch, dated 03.02.1998, wherein the Division Bench while considering an identical question, issued guidelines as under:

1. Where a property is required for public purpose viz., widening of roads or for any other purpose, the authorities straightaway cannot take law into their hands and jump into the premises, dispossess or evict the occupants or demolish the property.

2. If the authorities concerned want to take action for eviction/dispossession of the occupants or demolition, they shall issue 60 days' prior notice notifying as to the nature of the property, the property to whom it belongs and the proposed action calling for explanation/objections if any from the occupants. On receipt of such objections, if there is any objection as to the ownership of the property, the authorities should determine the extent of encroachment of unauthorized occupation and also determine whether the property in question belongs to Government/any

other local self Government or authority or the occupants and pass appropriate orders within three months from the date of receipt of the objections, after affording an opportunity of being heard to the occupants.

3. In case where demolition of private property has already been made, the authorities shall determine the damages on the basis of the assessment to be made by the Engineer of the Roads and Buildings Department and disburse the amount of damages quantified forthwith.

4. If the demolition is in respect of local bodies' Government property, the question of damages does not arise. In such an event, the occupant shall be entitled to remove the material used for the construction.

5. In case of demolition of private property, the authorities concerned shall determine the loss caused to the occupants on the basis of the assessment to be made by the Engineer of R & B Department and on such assessment of damages, the concerned authorities shall take appropriate steps to disburse the amount quantified forthwith.

6. If there is any claim for grant/assessment of the property, the concerned authorities shall consider the same in accordance with law taking into consideration the eligibility and the entitlement of occupants, after making enquiry and till such claim is decided, there shall be status-quo obtaining as on today regarding the structures.

The learned standing counsel appearing for the respondent does not dispute the above legal position.

Accordingly, the writ petition is disposed of directing the respondent not to demolish the structures in question without following the guidelines issued by the Division Bench in the above writ petition. No order as to costs.

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G. ROHINI, J

Dated: 11-04-2005.

LSK

To

1. The Commissioner, Visakhapatnam Municipal Corporation
Visakhapatnam.

2. Two C.D copies.